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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,639	05/30/2007	Michel Guillon	MIG 3051	8699
321 7590 12/29/2010 SENNIGER POWERS LLP 100 NORTH BROADWAY 17TH FLOOR ST LOUIS, MO 63102			EXAMINER ANDERSON, CATHARINE L	
			ART UNIT 3764	PAPER NUMBER
			NOTIFICATION DATE 12/20/2010	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

### Office Action Summary

**Application No.**

10/596,639

**Applicant(s)**

GUILLON ET AL.

**Examiner**

LYNNE ANDERSON

**Art Unit**

3764

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 42-56 and 72-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 81 is/are allowed.
- 6) ☒ Claim(s) 42-56 and 72-80 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 December 2010 has been entered.

***Response to Arguments***

2. Applicant's arguments filed 10 December 2010 have been fully considered but they are not persuasive.
3. In response to the applicant's argument that Schwebel discloses a non-transparent sleep mask and is incompatible with the intent of Refojo, it is noted that Schwebel is not relied upon to teach the specific mask apparatus, but rather is relied upon for the teaching of providing a mask that covers both eyes simultaneously to allow for treatment of both eyes at the same time. The eye enclosure of Refojo is modified based on the teaching to Schwebel to cover both eyes, and maintains its characteristics such as transparency.
4. In response to the applicant's argument that Refojo teaches away from modification to cover both eyes, since Refojo discloses a construction similar to that of one eyepiece of a swimmer's goggles, it is noted that this disclosure does not constitute a teaching away from the possibility of modification. Refojo discloses an eye enclosure

that is sized and shaped to cover one eye, and designed to provide a water-tight fit. Refojo does not disclose a second eye enclosure for covering the second eye, but rather discloses a single eye enclosure. Therefore, it is within the scope of the invention of Refojo to modify the eye enclosure to extend and cover both eyes in a single enclosure, as taught by Schwebel.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 42-56 and 72-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Refojo et al. (4,461,303) in view of Schwebel (6,641,264).
7. Refojo discloses an apparatus which is capable of providing a dry environment around the eyes of a user, comprising an eye enclosure 12, as shown in figure 3. The apparatus further comprises means for retaining the enclosure in position, strap 40, and means for supplying dry air to the enclosure, as disclosed in column 2, lines 35-37. The eye enclosure 12 comprises a transparent material, as disclosed in column 5, lines 40-41, and therefore the patient is able to see through the enclosure (i.e. the enclosure does not obstruct vision).
8. Refojo discloses all aspects of the claimed invention with the exception of the eye enclosure providing an enclosed area about both eyes simultaneously. Schwebel teaches an apparatus for treating eyes, as shown in figure 1, comprising an eye enclosure that covers both eyes simultaneously. This configuration allows both eyes to be treated at the same time.

9. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the apparatus of Refojo with an eye enclosure that covers both eyes simultaneously, as taught by Schwebel, to achieve the predictable result of allowing both eyes to be treated at the same time.
10. With respect to claim 43, the humidity of the air provided is less than 40%, as disclosed in column 6, lines 18-20.
11. With respect to claims 44 and 47, Refojo, as modified by Schwebel, discloses all aspects of the claimed invention with the exception of the dry air being generated by passing the air across a desiccant or condensation coils, and the wet air being passed through water. Refojo discloses providing conditioned air of a predetermined relative humidity from supply 32, as described in column 7, lines 25-35, but remains silent as to how the air is generated. The use of desiccants and condensation coils are well-known in the art for reducing the humidity of air. Likewise, passing air through water is known to increase the humidity of the air. It would therefore have been obvious to one of ordinary skill in the art at the time of invention for the air supply of Refojo to produce dry air using desiccants or condensation coils, and to produce wet air by passing the air through water, to achieve the predictable result of producing air of the desired humidity.
12. With respect to claim 45, the dry air is pumped to the eye enclosure, as disclosed in column 2, lines 35-37.
13. With respect to claim 46, dry air and wet air are mixed in the enclosure to achieve the desired level of dryness, as disclosed in column 3, lines 28-34, and column 6, lines 20-23.

14. With respect to claims 48-49, the apparatus further comprises means for measuring the humidity of the air and means for adjusting the mixture so the desired level of humidity is achieved, as disclosed in column 5, lines 16-17, and column 6, lines 20-23.

15. With respect to claim 50, the dry air is mixed with wet air within conduit 28 prior to being supplied to the eye enclosure, and therefore conduit 28 functions as a mixing chamber.

16. With respect to claim 51, the means for supplying dry air allows for equal air flow to each eye that is wearing the apparatus.

17. With respect to claim 52, the eye enclosure 12 covers the eye and has a head strap 40, and therefore is considered goggles.

18. With respect to claim 53, Refojo discloses all aspects of the claimed invention with the exception of the goggles having two chambers, one to cover each eye. It would have been obvious to one of ordinary skill in the art at the time of invention to provide the apparatus of Refojo with two chambers to achieve the predictable result of being able to test both eyes at the same time.

19. With respect to claim 54, Refojo discloses all aspects of the claimed invention with the exception of the goggles being made of plastic. Refojo discloses in column 5, lines 32-34 and 40-41, that the goggles have a similar construction to swimmer's goggles, and are made of a transparent material. Swimmer's goggles are well-known to be formed of plastic in order to provide a water-tight, transparent eye chamber. It would therefore be obvious to one of ordinary skill in the art at the time of invention to make

the goggles of Refojo from plastic, to achieve the predictable result of providing a water-tight, transparent eye chamber.

20. With respect to claim 55, the apparatus is capable of being transported, and is therefore portable.

21. With respect to claim 56, the apparatus further comprises means for adjusting the temperature of the air, as disclosed in column 6, lines 4-7.

22. With respect to claims 72-80, the apparatus comprises all the physical limitations of the present claims, and is fully capable of being used in testing different items or for different conditions.

***Allowable Subject Matter***

23. Claim 81 is allowed.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYNNE ANDERSON whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lynne Anderson/  
Examiner, Art Unit 3764